IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

J U D G M E N T

(1) SUKHDEO SINGH. V. THE STATE OF RAJASTHAN

D. B. CRIMINAL JAIL APPEAL NO.367/2002

(2) SUKHDEO SINGH. V. THE STATE OF RAJASTHAN.

D. B. CRIMINAL APPEAL NO. 684/2002

Both the appeals are filed against the Judgment dated 22.03.2002 passed by the Additional District & Sessions Judge No.3, Jodhpur in Criminal Case No.1/2002 (State v. Sukhdeo Singh).

DATE OF JUDGMENT: JULY 26, 2006.

PRESENT.

HON'BLE MR. JUSTICE N. N. MATHUR

HON'BLE MR. JUSTICE R. P. VYAS

Mr.H.S.Balot, for Appellant.
Mr.O.P.Rathi, P.P. For the State.

REPORTABLE BY THE COURT: (PER HON'BLE R. P. VYAS, J.)

Appellant – Sukhdeo Singh has filed two appeals; one through Superintendent, Central Jail, Jodhpur and another

through advocate, under Section 374, Cr.P.C.. Both the appeals are is directed against the judgment dated 22.03.2002, passed by the learned Additional Sessions Judge No.3, Jodhpur, whereby accused-appellant Sukhdeo Singh has been convicted and sentenced under Section 302, IPC, to life imprisonment and a fine of Rs.2,000/-, in default of payment of fine to further undergo six months' additional imprisonment.

In nut-shell, the prosecution case is that on 07.12.2001, at 9.35 a.m., one Girdhari Singh (PW 1) lodged a report (Ex.P-1) with the Police Station, Dechu stating, inter alia, therein that about two and half years ago, his deceased niece Geeta D/o. Roop Singh was married to appellant Sukhdeo Singh. Out of the wedlock, a son was born. It was further averred in the report that about fifteen days ago Sukhdeo Singh had dropped his wife - Geeta at the house of Roop Singh. A day before the incident, i.e., on 06.12.2001, Roop Singh and his wife had gone to Dechu to attend the marriage, from where Roop Singh went with the Barat and did not return to home. On 06.12.2001, at about 9.00 P.M., Sukhdeo Singh had arrived village Kanodia Purohitan by hiring a Jeep from Dechu, which was being driven by one Dholi. The said Jeep dropped Sukhdeo Singh in the village house and returned back. When Sukhdeo Singh came to his house, the informant, his father – Mansingh and ladies were present in the house. It was also averred in the report that Sukhdeo Singh was

served with a cup of tea and then, dinner. He was lodged at the house of Roop Singh along with Geeta and his son – Kishan. In the morning, Geeta and baby were found dead and appellant Sukhdeo Singh missing. He suspected involvement of appellant Sukhdeo Singh in the crime.

On the basis of the aforesaid report FIR (Ex.P-34), Police registered a case under Section 302, IPC, and proceeded with investigation. During the course of investigation, Police inspected the site and sent the body for autopsy. The appellant was arrested. In pursuance of the information given by the appellant, recoveries of knife and blood stained clothes were made.

After completion of investigation, a charge sheet under Section 302, IPC, was filed against the accused Sukhdeo Singh in the Court of the Judicial Magistrate, Balesar. Since the case was exclusively triable by the Sessions Court, it was committed to the Court of Session, from where it case was transferred for trial to the Court of the Additional Sessions Judge No.3, Jodhpur.

After hearing the arguments, the charges under Section 302, I.P.C., were framed against the accused-appellant. He pleaded not guilty and claimed trial.

In order to prove its case, the prosecution examined as many as 16 witnesses (PW 1 to PW 16) and exhibited 36 documents. In defence, the accused examined Dr.R.C.Bansal as

D.W.1 and produced 3 documents Ex.D-1 to Ex.D-3.

In statement under Section 313, Cr.P.C., appellant denied the correctness of prosecution evidence. He pleaded innocence.

After hearing the final submissions of the learned counsel for the parties, the trial Court convicted and sentenced the accused-appellant Sukhdeo Singh as mentioned above.

It is submitted by the learned counsel for the accused-appellant that the accused has been falsely implicated in the murder of his wife and son as there is not an iota of evidence to connect him with the crime. Apart from that, it has not come out from the statements of the prosecution witnesses that there were inimical relations between the accused and his deceased wife.

It is further submitted by the learned counsel for the accused-appellant that there is no eye witness to the occurrence and not even a single witness has supported the case of the prosecution.

It is also submitted by the learned counsel for the accused-appellant that there was no motive or intention on the part of the accused to commit the murder of his own wife and child and, according to the learned counsel, without motive or intention, it is not possible to commit the murder.

It is contended by the learned counsel for the accused-

appellant that the knife has been recovered by the Investigating Officer from the open place, which was visible and accessible to the public in general. Thus, according to him, the recovery of knife from the open place is not worth reliable and cannot connect the accused with the crime.

It is further contended by the learned counsel for the accused-appellant that the FIR has been lodged after preliminary investigation on 07.12.2001. Thus, it is is post-investigation document and no reliance can be placed on the said FIR. Apart from that, it does not appear from the deposition of any of the prosecution witnesses that the murder was committed by the accused-appellant only.

It is also contended by the learned counsel for the accused-appellant that the last seen evidence of PW 3 Mag Singh – brother of the deceased Geeta - does not connect the accused with the crime. He has deposed that at about 9.00 P.M., 06.12.2001, Sukhdeo Singh had arrived at his inlaws' house. He has further deposed in his statement that one room was occupied by accused Sukhdeo Singh, his sister – Geeta and Kishan (minor son of Geeta) and, in another he (Mag Singh) and his brother had slept, during that night. Apart from that, bag ('thela') of Sukhdev Singh was lying in their room, where his sister Geeta, Kishan and Sukhdeo Singh had slept during that night. According to the learned counsel, the last seen evidence

is a weak type of evidence and in the absence of any solid proof, no reliance can be placed on the last seen evidence. Learned counsel also submitted that prior to her death, Geeta has not disclosed to any one that she was harassed or tortured by her husband at her in-laws' house and neither such a statement has come out on record during investigation nor during the trial of the case. Thus, according to the learned counsel, in the absence of any convincing and cogent evidence, the accused-appellant cannot be connected with the crime.

In the alternative submissions, it is argued by the learned counsel for the accused-appellant that the conviction of the accused Shkhdeo Singh may be converted from Section 302, IPC to Section 304 Part-II, IPC.

On the other hand, the learned Public Prosecutor has supported the judgment of the trial Court. According to him, the judgment of the trial Court is based on sound reasonings and does not call for any interference by this Court, as the prosecution, by establishing the complete chain of circumstances, has been able to prove its case beyond all reasonable shadow of doubts.

Heard learned counsel for the parties.

Girdhari Singh (P.W.1) has deposed that Roop Singh (father of deceased Geeta) is his brother and his house is situate at a little distance from the house of Roop Singh. About two

and half years ago, Geeta was married to Sukhdeo Singh. On 06.12.2001, Roop Singh and his wife had gone to Dechu village to attend the marriage by leaving Geeta, Kishan (a minor of son of Geeta), and Mag Singh (son of Roop Singh) and Ramesh at home. On 06.12.2001, at about 9.00 P.M., the accused Sukhdev Singh had come to the village in a Jeep, driven by Devaram Dholi. The witness further deposed that he went to the 'Baithak' of Roop Singh. Accused Sukhdev Singh was served dinner at his house. Then he took Sukhdeo Singh to the house of Roop Singh. In a room of the house of Roop Singh, Sukhdeo Singh, Geeta and Kishan went to sleep and he returned to his own house. In the morning, he went with tea at the house Roop Singh. He saw in the 'Baithak' of the house, where Sukhdeo Singh was not present. Door of the room was closed, but there was no 'Kundi' on it. Thereafter, he and Mag Singh opened the door of the room and found that Sukhdeo Singh was not present in the room. When he picked up quilt, he saw that Geeta was lying dead, having injuries on her body. Along with Geeta, her son, aged one year, was also lying dead. There were knife injuries on her body and marks of violence on her throat. Bag of Sukhdeo Singh was lying there. He deposed that Sukhden Singh had done away her niece Geeta and Kishan (a minor son of Geeta). Similarly, Mag Singh (P.W. 3), who is brother of deceased Geeta, has deposed that on 06.12.2001, accused

Sukhdeo Singh had come to their house and they (Sukhdeo Singh, Geeta and Kishan) had gone together to sleep during that night in one room and in another he and Ramesh Singh had slept. He further deposed that he studied for two and half hours in the night and then he slept. He got up in the morning and called his sister, but there was no response. In the meanwhile, his uncle Girdhari Singh had come to their house with tea. They opened the door of the room and picked up quilt. He found that his sister was lying dead, having knife injuries on her body and Kishan (a minor son of Geeta) was also throttled. He also found that there were knife injuries on the stomach of Geeta. The bag of Sukhdeo Singh was lying the room, but he was not present there. The dead bodies of Geeta and Kishan were lying on the cot. Devaram (P.W.6) has also deposed that in the evening of 06.12.2001, his Jeep was hired for Rs.60/- by Sukhdeo Singh accused for dropping him to village Kanodiya Purohitan. Sukhdeo Singh accused told him that he is going to his inlaws' house. He had left the accused Sukhdeo Singh to the house of Roop Singh and returned back from there. These witnesses were cross-examined vigorously, but nothing could be elicited from their statements, by which adverse inference can be drawn.

Dr. Ramesh Chand Bansal (P.W.4) has deposed that on 07.12.2001, he was posted as Medical Officer, Primary Health Centre, Balesar. On that day, at 2.35 p.m., he conducted the

post mortem examination of Smt. Geeta D/o. Roop Singh. He found the following injuries on the deceased :-

> "(1) There were four cut wounds of 2 x 1 cm on the back of the body.
>
> (2) There was 3 x 2 cm size cut would on the Ant. Wall of abdomen leading to oozing of intestine present.
>
> (3) Marks of finger and thumb present on Anterolateral of neck. Tongue slightly protrude out. Pupils were dilated and fixed.
>
> (4) On opening the body, membranes, Brain and Spinal Cord were congested. Pleurae, Right Lung – Left Lung, Pericardium, Liver, Spleen and Kidneys were congested. Heart and Large vessels were empty. Part of intestine is coming out of abdomen due to injury. Organs generation : external and internal were normal. Fracture of hybrid is present."

In the opinion of the Doctor, the cause of death was asphyxia due to compression of trachea which led to cardiorespiratory failure and death due to throttling of neck. According to him, the death had taken place 18 to 20 hours prior to the post mortem examination.

On the same day, he conducted the post mortem examination of Kishan S/o. Sukhdeo Singh. He found the following injuries on the body of deceased Kishan :-

> "(1) On external examination, the child was found to be well developed, well nourished and healthy. Marks of finger and thumb were present on Anterolateral of

neck. Pupils were dilated and fixed.

(2) Cranium and Spinal Cord : Membranes, Brain and Spinal Cord were congested.

(3) Thorax : Pleurae, Right Lung, Left Lung and Pericardium were congested. Heard and Large vessel were empty.

(4) Abdomen : Stomach was empty. Small intestine and digestion protrude. Large intestines present. Liver, Spleen and Kidneys were congested. Bladder was empty and normal."

In the opinion of the Doctor, the cause of death of Kishan was asphyxia due to compression of trachea which led to cardiorespiratory failure and death due to throttling of neck. According to him, the duration of death is within 20 hours.

PW 7 Gokul Singh is a witness of recovery of knife. He deposed that the accused dug the land beneath a 'Ker' tree standing on the boundary of the road and got recovered blood stained knife from there, which was seized and sealed by the police in his presence and marked Ex.P-15. In-charge of the Malkhana, Rahim Bux (P.W.11), who was Head Constable and posted at Police Station, Dechu has deposed that vide entry No.16 in the Malkhana register, the sealed packets were deposited and on 12.12.2001, the same were sent to the FSL for chemical examination. Durg Singh (P.W.12) a Constable of Dechu Police Station carried the sealed packets to FSL in

12.12.2001 in a sealed condition. Surjaram (P.W.13), a Photographer, has deposed that he took the photographs of deceased Geeta and Kishan as well as of site plan on 07.12.2001. FSL report (Ex.P-35) testifies that the seals on the packets were intact and the human origin was found on the recovered articles.

So far as the contentions of the learned counsel for the accused-appellant - that there were no inimical relations between the accused and the deceased, there was no eye witness to the occurrence, there was no motive or intention on the part of the accused to the commit the murder of his own wife and child, recovery of knife has been made from the open place, FIR has been lodged after preliminary investigation, last seen evidence is a weak type of evidence and conversion of offence from Section 302, IPC to Section 304, Part-II, IPC - are concerned, it may be mentioned that no doubt, admittedly the case is based on circumstantial evidence, but it is established from the depositions of PW 1 Girdhari Singh, who is uncle of the deceased, PW 3 Mag Singh, who is brother of deceased and PW 6 Devaram, who is Driver of the Jeep, coupled with the opinion of the Doctor, Post Mortem Examination Report, recovery of the blood stained knife at the instance of and by the accused Sukhdeo Singh and non-explanation of the accused as to how his clothes were blood-stained at the time of arrest and

why did he disappear silently from his inlaws' house during the night of the incident,whereas all the three (accused - Sukhdeo Singh, deceased - Geeta and minor son – Kishan) had retired to bad together in one room, as well as from the FSL examination report that the human origin was found on the recovered articles that it was only the accused and none else who has has committed the murder of his wife Geeta and son Kishan.

On scrutiny of the entire material available on record, it reveals that the circumstances from which an inference of guilt is sought to be drawn cogently and firmly establish that the crime has been committed by the accused and none else. Apart from that, the circumstances are of definite tendency unerringly pointing towards the guilt of the accused and, if all the aforesaid circumstances of the case are taken cumulatively, they form a chain so complete that there is no escape from the conclusion that within all human probability, the crime has been committed by the accused and none else.

Apart from that, the following circumstances also establish and point out towards the guilt of the accused appellant Sukhdeo Singh and none else :-

(a) That Devaram (PW 6) has deposed in his statement that on 06.12.2001, at 8.30 – 9.00 P.M., accused Sukhdeo Singh hired his Jeep No. RJ-19 (C) 132 for Rs.60/- for dropping him from Dechu Bus Stand to Kanodiya Purohitan and he dropped

him (accused) at his in-laws' house.

(b) That at about 10.00 p.m., the accused Sukhdeo Singh, his wife – Geeta and son – Kishan retired to bed in one room of his in-laws' house.

(c) In the morning, the wife of the accused Smt.Geeta and son – Kishan were found dead in a pool of blood.

(d) That in the morning, the accused was not found present in the room and his bag was lying there in the room, where murder of Smt.Geeta and Kishan was committed.

(e) That the cause of death, as opined by the Doctor, was asphyxia and throttling and dead body of Geeta was having various injuries caused by a sharp-edged weapon (Knife).

(f) That just after the incident, i.e., on 07.12.2001, the human blood was found on the clothes of the accused Sukhdeo Singh at the time of his arrest.

(g) That after one day of the incident, i.e., 08.12.2001, the blood stained knife was recovered at the instance of and from the accused.

(h) That the same blood group 'B' was found on the knife got recovered by the accused and closed cover of the bed ('pattharna-ki-kholi'), recovered from the place of incident, where murder of Geeta and Kishan had taken place.

(i) That no explanation was offered by the accused

Sukhdeo Singh with regard to the blood found on the knife and his own clothes.

(j) Pleading ignorance by the accused Sukhdeo Singh as to how his wife Geeta and son – Kishan died, whereas, in the previous neight, they all retired to bed together at about 10.00 p.m. in a room of his in-laws' house.

It may be mentioned that as laid down in Arvind @ Pappu v. State (1999 Cr.L.R. SC 420), the standard of proof required to convict a person on circumstantial evidence is well established by various decisions of the Apex Court. According to that standard, the circumstances relied upon in support of the conviction must be fully established and the chain of evidence furnished by those circumstances must be so complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused. The circumstances from which the conclusion of the guilt is to be drawn have not only to be fully established, but also that all the circumstances so established should be of a conclusive nature and consistent only with the hypothesis of the guilt of the accused and should not be capable of being explained by any other hypothesis except the guilt of the accused and when all the circumstances cumulatively taken together should lead to the only irresistible conclusion that the accused alone is the perpetrator of the crime.

So far as the contention of the learned counsel for the

accused-appellant that the accused Sukhdeo Singh has no motive to commit the murder of his own wife and son and the motive has not been established by the prosecution, it may be pointed out that the motive for doing a criminal act is generally a difficult area for prosecution. One cannot normally see into the mind of another. Motive is the emotion which impells a man to do a particular act. Such impelling cause need not necessarily be proportionally grave to do grave crimes. Many murders have been committed without any known or prominent motive. It is quite possible that the aforesaid impelling factor would remain undiscoverable. Thus, it is not necessary to prove motive to establish the guilt in order to sustain conviction.

So far as recovery of knife from the open place and accessible to others, as alleged by the learned counsel for the accused-appellant, is concerned, their Lordships of the Hon'ble Supreme Court in Himachal Pradesh v. Jeet Singh (1999 Cr.L.R. SC 192) have held as under :-

> "There is nothing in Section 27 of the Evidence Act which renders the statement of the accused inadmissible if recovery of the articles was made from any place which is open or accessible to others. It is a fallacious notion that when recovery of any incriminating articles was made from a place which is open or accessible to others, it would vitiate the evidence under Section 27 of the Evidence Act. Any object can be conceived in places which are open or accessible to others. For example, if the article is buried on the main roadside or if it is concealed beneath dry leaves lying in public place or kept hidden in a public office, the article would remain out of the visibility of others in normal circumstances. Until such

> article is disinterred its hidden state would remain unhampered. The person who hit it alone know where it is until he discloses that fact to any other person. Hence, the crucial question is not whether the place was accessible to others or not, but whether it was ordinarily visible to others. If it is not then it is immaterial that the concealed place is accessible to others."

So far as alternative argument of the learned counsel for the accused-appellant Sukhdeo Singh for converting the offence from Section 302, IPC to Section 304, Part II, IPC, is concerned, it may be mentioned that Section 304, Part II is attracted only when it is proved that even if the accused had no intention to cause such bodily injury as was likely to cause death but had the knowledge that the injury was likely to cause death. When the accused-appellant gave a single blow with a knife on the vital part of the body and which proves fatal, then he can be convicted under Section 304, Part II, IPC. Here, in the instant case, the accused-appellant Sukhdeo Singh had throttled the neck of his wife Geeta and son – Kishan and had inflicted a number of grievous injuries with knife on the stomach and back of the deceased, which reflects his intention and knowledge to commit the murder of his wife and son, then, in such a situation, he cannot be convicted under Section 304, Part II, IPC. He has rightly been convicted under Section 302, IPC, by the trial Court.

In view of the aforesaid facts and circumstances of the

case, the contentions of the learned counsel for the accused-appellant Sukhdeo Singh are not sustainable in the eye of law.

The findings of the learned trial Court are just and proper and are based on sound reasonings on the basis of the appreciation of the evidence on record. Thus, the findings recorded by the learned trial Court do not call for any interference by this Court.

Consequently, we do not find any force in both the appeals of accused – appellant Sukhdeo Singh. The appeals are, therefore, dismissed.

(R.P.VYAS),J. (N. N. MATHUR), J.

scd.